having its *situs* within the state was not questioned. The attack was made upon the method of assessment, which, by reason of the apportionment *formula,* resulted in a greater tax upon the transfer of the New Jersey stocks than would have been assessed if the stock has passed from a resident decedent. This was assailed, under the federal Constitution, as, first, giving residents "privileges and immunities" denied to non-residents; second, denying to non-residents the equal protection of the laws; and third, violating the due process clause by taxing the transfer of real estate located outside New Jersey. The majority opinion rejected the first contention with a summary reference to authorities; it overruled the second on the ground that classification between estates of resident and non-resident decedents is reasonable, and that absolute equality between the two classes is not required by the equal protection clause; it declares, as to the third, that the tax is levied upon the transfer of property within the state's jurisdiction, the property outside being merely used in the apportionment *formula* as a measure of the tax. See (1919) 28 YALE LAW JOURNAL, 802. The minority, on the other hand, speaking through Mr. Justice Holmes, asserts that increasing the tax by taking account of property outside the state is in effect taxing such property—which is beyond the state's power. He also appears to agree with the first contention of the plaintiffs in error. It is hard to see why granting to residents the privilege and power to bequeath New Jersey property free from payment of the larger tax, while denying the same privilege and power to non-residents, is not in violation of Art. 4, sec. 2, of the federal Constitution. See Cooley, *Constitutional Limitations* (7th ed. 1903) 569. The decision is another illustration of how far a state may go in discriminating against citizens of other states without running counter to constitutional prohibitions. See (1919) 28 YALE LAW JOURNAL, 601. Apart from the question of discrimination the New Jersey law has features both desirable and undesirable. If adopted in all states, for both residents and non-residents, it would lead to a very fair apportionment of the tax-returns from estates. But when combined with the prevailing system in other states, it offers fertile field for double levy.

TAXATION — JOINT BANK ACCOUNT — TRANSFER AT DEATH OF ONE JOINT OWNER.—One Stella Bigelow deposited money in the name of "Stella Bigelow or Caroline Bigelow, either or survivor." Caroline died. The state instituted proceedings to collect a tax on the ground that there had been a taxable transfer under section 220 of the Tax Law. *Held,* that the whole account should be taxed. *In re Bigelow's Estate* (1919, Surr. Ct.) 177 N. Y. Supp. 847.

The crucial question in the case was whether or not there was any "transfer." When Stella made the joint deposit, there was created in Caroline a privilege and a power to draw on the account to any amount, a liability to become sole owner of the account should Stella die first, and an immunity from the exercise by Stella of any dominion over the account except her own privilege and power to draw. All these legal relations died with Caroline. They were not *transferred* from Caroline to Stella in the ordinary sense: that where Caroline had possessed certain rights, privileges, powers, and immunities, Stella then acquired precisely similar relations—as would have happened had Caroline willed to Stella a house or a horse or a bank account. As it was, Caroline's death killed her own rights, privileges, etc., but created in Stella no new legal relations. For example, Caroline's privilege and power to draw on the account did not "pass" to Stella. Although Stella acquired nothing, she did benefit to the extent that her disadvantageous no-rights, liabilities, and disabilities died simultaneously with Caroline's privileges, powers and immunities. The court, without reasoning, denominated such a change of legal relations a taxable transfer.

Cases in accord with this view usually go on the ground that a joint account is in the nature of a gift which is incomplete until the death of the donor. *Matter of Durfee* (1913, Surr. Ct.) 79 Misc. 655, 140 N. Y. Supp. 594; *Matter of von Bernuth* (1913, Surr. Ct.) 143 N. Y. Supp. 672; *Matter of Kline* (1909, Surr. Ct.) 65 Misc. 446, 121 N. Y. Supp. 1090. And it will be observed that once a joint account has been created, the death of the donor and that of the donee have precisely similar effects. On the contrary, it has been held that the gift was complete at the date of the creation of the account; hence that there was no transfer when one joint owner died. *Matter of Tilley* (1915, Sup. Ct.) 166 App. Div. 240, 151 N. Y. Supp. 79; *McDougald v. Boyd* (1916) 172 Calif. 753, 159 Pac. 168; *Attorney General v. Clark* (1915) 222 Mass. 291, 110 N. E. 299. It is submitted that the latter view is preferable. Undoubtedly, the death of one of the parties produced a change of legal relations which was beneficial to the survivor, but it was not the kind of change which is fairly denoted by the word "transfer." The situation in these cases is clearly distinguishable from a revocable trust where, prior to the death of the settlor, the *cestui que trust* has no immediately beneficial legal relations such as the privilege and power possessed by the joint owner of a bank account. In such a case, the death of the settlor produces a genuine transfer. *Bullen v. State of Wisconsin* (1916) 240 U. S. 625, 36 Sup. Ct. 473.

TORTS—ANIMALS IN HIGHWAY—LIABILITY OF OWNER.—The defendant's horse, while at large on a highway in front of the defendant's premises, was run into by the plaintiff's automobile without negligence on the part of the plaintiff. He sued to recover the damage to the automobile. It was not shown to be unlawful by any town by-law for a horse to be at large in the public ways of the town; nor was there evidence that the defendant knowingly permitted the horse to be at large on the night of the accident. *Held,* that the plaintiff should not recover. *Dyer v. Mudgett* (1919, Me.) 107 Atl. 831.

It is well settled that where it is shown affirmatively that the owner of a domestic animal had knowledge that the animal was vicious, he is under a duty to pay damages for any injury done by it. *Roos v. Loeser* (1919, Calif. App.) 183 Pac. 204, and see (1915) 24 YALE LAW JOURNAL, 514. But where the owner has no such knowledge he is under no such duty, if the animal was rightfully where the damage was done. *Dix v. Somerset Coal Co.* (1914) 217 Mass. 146; *Clowdis v. Fresno Flume & Irrigation Co.* (1897) 118 Calif. 315, 50 Pac. 373. But it is generally held that if the owner was not privileged to allow his animal to be at the place of damage, he is under such a duty regardless of *scienter*. *Hardiman v. Wholley* (1899) 172 Mass. 411, 52 N. E. 518; *Stern v. Hoffman Brewing Co.* (1899, Sup. Ct.) 26 Misc. 794, 56 N. Y. Supp. 188; see also 25 L. R. A. (N. S.) 691, note. The owner of lands abutting upon a public highway generally owns the fee to the center thereof. *Huffman v. State* (1899) 21 Ind. App. 449, 52 N. E. 713; see *City of Houston v. Finnigan* (1905, Ct. Civ. App.) 85 S. W. 470, 471. And such an owner may make any reasonable use of that land, subject only to the easement of the public. *Farnsworth v. City of Rockland* (1891) 83 Me. 508, 22 Atl. 394; *King v. Norcross* (1907) 196 Mass. 373, 82 N. E. 17. By the weight of authority the mere fact that a domestic animal was in the highway does not place on the owner an unconditional duty to pay money damages for all injuries that may have accidentally resulted therefrom. But there may be situations where it would be culpable to permit animals to occupy the highway. Even then, it would seem that the owner would be "liable" only if the animal was there through his negligence. See *Holden v. Shattuck* (1861) 34 Vt. 336, 343, 344, 80 Am. Dec. 684, 686, 687. In the principal case there was no trespass and therefore no unconditional duty to pay damages for the resulting injuries, but present-